

Jimmy Machuca

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1 Machuca
 2 Q Do you have any waybills or any
 3 documents from the trucker relative to their
 4 transport of the cargo from the pier to J.R.J.'s
 5 facility?
 6 A Yes.
 7 MR. WOLFSON: Off the record.
 8 (Discussion off the record)
 9 A Here it is.
 10 Q Is that 59?
 11 A Yes.
 12 MR. WOLFSON: Let the record
 13 reflect that the witness has directed our
 14 attention to Bates stamp 59 of Machuca 1.
 15 It says, "Truck invoice."
 16 Q And so this invoice indicates that
 17 it cost \$500 for the hauling of the cargo from the
 18 pier to J.R.J.'s facility?
 19 A Yes.
 20 MR. McCONNELL: That includes the
 21 return.
 22 Q And was that paid?
 23 A Yes.
 24 Q Do you have any proof of payment
 25 for that?

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1 Machuca
 2 A No.
 3 MR. WOLFSON: Again, I ask that we
 4 be provided with proof of that payment.
 5 Q Isn't there typically a waybill
 6 that the trucker has, a receipt, TIR or something?
 7 A Should be.
 8 Q Do you have copy?
 9 A I don't know.
 10 Q That receipt would indicate if
 11 there were any exceptions taken by the trucker?
 12 A What kind of exceptions?
 13 Q If the trucker sees any damage to
 14 the container or the trucker would note it down?
 15 A I don't know.
 16 Q Do you have a copy of any way bills
 17 or TIRs or any other receipts for the cargo from
 18 the trucker?
 19 A No.
 20 Q Do you think you might have some of
 21 those documents back at J.R.J. or somewhere else?
 22 A Maybe.
 23 MR. WOLFSON: I would ask on the
 24 record that we be provided with any other
 25 documents from the trucker indicating the

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1 Machuca
 2 condition of the cargo as noted by the
 3 trucker.
 4 A Can I say something about trucking?
 5 Some of these truckers, they get
 6 paid cash. They need the cash and tell you, can
 7 you do me a favor and have the cash ready.
 8 Q Do you happen to know if you paid
 9 this one in cash?
 10 A I will check.
 11 Q You will have some notation?
 12 A Yes, my phone bill.
 13 MR. McCONNELL: I also would like
 14 to put on the record these local
 15 truckers --
 16 MR. WOLFSON: John, that's not an
 17 objection.
 18 MR. McCONNELL: It's not an
 19 objection, but it's a fact.
 20 MR. WOLFSON: Say it off the
 21 record.
 22 MR. McCONNELL: They just send a
 23 bill for moving it, no bill of lading.
 24 MR. WOLFSON: Just note my
 25 objection to the speaking objection and

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1 Machuca
 2 note my disagreement.
 3 A We are dealing with plantains going
 4 to the Bronx market, know what I mean? This is
 5 all, it's moot.
 6 Q About how far was your facility
 7 from the port where the container was picked up?
 8 A About 30 to 40 miles.
 9 Q How long would it usually take for
 10 a cargo to be trucked from the port to your
 11 facility?
 12 A Depending on traffic, an hour.
 13 Q In this case, do you have any
 14 independent recollection about how long it took?
 15 A No.
 16 Q And again, do you have any
 17 documents from the trucker from J.R.J. which
 18 indicates the time of receipt, time of pickup?
 19 A I write down on my folder when I
 20 get my containers. I just handwrite the date and
 21 the time. I hope I did with this one.
 22 MR. WOLFSON: Again, I would ask
 23 for any documents you have in that
 24 regard.
 25 Ideally I would like to know when

14 (Pages 50 to 53)

1 Machuca
 2 it was picked up. The time it was
 3 received is nice. It's relevance comes
 4 into play when I know when it was picked
 5 up in port.
 6 MR. McCONNELL: We understand it
 7 arrived at 4:00 in the afternoon.
 8 MR. WOLFSON: John, please.
 9 MR. McCONNELL: I am saying this,
 10 because there is a document somewhere
 11 that says this.
 12 MR. WOLFSON: I am willing to be
 13 loose, but at least go off the record.
 14 It's not an appropriate objection. You
 15 shouldn't have speaking objections.
 16 MR. McCONNELL: It's right in the
 17 survey report.
 18 MR. WOLFSON: You want to go off
 19 the record?
 20 MR. McCONNELL: No.
 21 MR. WOLFSON: Note my objection,
 22 that the counsel is coaching the witness.
 23 MR. McCONNELL: You know he needs
 24 some help.
 25 A Exhibit 65 tells you what time

1 Machuca
 2 reporting of damage to the shipment to the
 3 carrier, surveyor was not provided by the carrier.
 4 The shipment had been examined by CFS-AQI prior to
 5 our examination."
 6 All right. My first question is,
 7 and I believe there was some production of a fax,
 8 notice of claim to CSAV?
 9 A Yes.
 10 Q Where is that?
 11 A Exhibit 60, 60.
 12 Q Do you have any fax transmission
 13 report for this?
 14 A Nope.
 15 Q Is it your practice to keep those
 16 transmission reports?
 17 Does your fax machine print one
 18 out?
 19 A No.
 20 Q You never have any confirmation
 21 reports?
 22 A I used to, but I don't follow it
 23 up.
 24 Q Do you know if this was faxed or
 25 emailed?

1 Machuca
 2 the -- where and the time.
 3 Q This isn't in the survey report?
 4 A Yes.
 5 Q You're referring to the section
 6 where the surveyor says "J.R.J. personnel stated
 7 the shipment had arrived on July 20, 2006 at
 8 approximately 1600 hours"?
 9 A Yes.
 10 Q That's something -- that's
 11 something the surveyor is saying somebody told
 12 him.
 13 I am asking is there another
 14 independent document that would confirm that?
 15 You say you might have an entry?
 16 A I should have it written down on a
 17 piece of paper.
 18 Q You have no reason to believe
 19 that's inaccurate?
 20 A No, no reason to believe it's
 21 inaccurate.
 22 Q Again, let's go back to the top of
 23 the page, Bates stamp 65.
 24 Again, I will quote, "Surveyor
 25 says, 'We understood from Mr. Machuca, that after

1 Machuca
 2 A It was faxed by me.
 3 Q Because just to explain the
 4 situation, CSAV is adamant they never received
 5 this fax and have no knowledge of this.
 6 A Of course.
 7 Q I am not asking a question.
 8 A If they're going to decline a
 9 claim, they're going to say they didn't receive a
 10 fax.
 11 MR. WOLFSON: I move to strike.
 12 Q Ordinarily there would be a
 13 confirmation receipt and that would be a silly
 14 claim to make, inasmuch as it could readily be
 15 disapproved.
 16 You don't have a confirmation?
 17 A No, sir.
 18 Q Do you know who faxed it, was it
 19 you?
 20 A I faxed it myself.
 21 Q Do you remember it? I know it's a
 22 long time ago, do you remember?
 23 A It says, "Faxed 4/21/06," that's my
 24 handwriting.
 25 Q I understand that. I wouldn't

1 Machuca
 2 remember it either if I was asked this question,
 3 but I have to ask if you actually remember being
 4 at the fax machine, push the button? You remember
 5 that?
 6 A Yes.
 7 Q Do you remember hanging around and
 8 waiting at the fax machine until all the beeping
 9 was done and all of that was done or did you walk
 10 away?
 11 If you don't remember, that's fine.
 12 A If it wouldn't have gone through, I
 13 would have sent it again, if I have a problem with
 14 one of my cargo.
 15 Q How would you know if a fax didn't
 16 go through, unless you got a receipt or a report
 17 from the fax machine?
 18 A I use my fax quite often. I would
 19 have noticed.
 20 Q Now, this is something I didn't
 21 understand. When he says the shipment had been
 22 examined by CFS-AQI prior to our examination, who
 23 are CFS-AQI?
 24 A AQI is agriculture. And CFS got to
 25 be Custom, right?

1 Machuca
 2 Q Sometimes USDA is requested to do a
 3 survey, correct?
 4 A Requested to do a survey?
 5 Q Yes.
 6 A Yes.
 7 Q And are there occasions when they
 8 do a survey without being requested?
 9 A No.
 10 Q Did you request USDA to do a survey
 11 here?
 12 A No.
 13 Q Why not?
 14 A I didn't think about it.
 15 Q The next paragraph talks about
 16 packaging and I will quote --
 17 MR. McCONNELL: Before you go
 18 there. The only document that shows the
 19 bugging by AQI is the seal that stamped
 20 on the DAA immediate entry form which is
 21 Exhibit 58, and it shows that it was a
 22 back tailgating exam on the 19th.
 23 MR. WOLFSON: Off the record.
 24 (Discussion off the record)
 25 Q Next paragraph talks about

1 Machuca
 2 Q Yeah. Isn't there usually a little
 3 report from them, from the Department of
 4 Agriculture?
 5 A If there is, I never get it. If
 6 there is, I never get that.
 7 MR. McCONNELL: AQI is the
 8 quarantine. They look for bugs.
 9 Q If the Department of Agriculture
 10 had seen rotten plantains, is it their practice to
 11 write something down or tell you about it?
 12 A No.
 13 MR. McCONNELL: In fact --
 14 (Discussion off the record)
 15 Q In any event, in CFS-AQI's
 16 examinations, is it your experience that there
 17 would be a document afterwards?
 18 A No.
 19 Q In this case, there was no such
 20 document issued?
 21 A No.
 22 Q U.S. Department of Agriculture?
 23 MR. McCONNELL: Just a second.
 24 Hold your thought.
 25 MR. WOLFSON: Okay.

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 2 packaging, "The cartons were double-walled, single
 3 corrugated, cardboard with telescoping tops.
 4 1,016 cartons contained 50 pounds of fresh
 5 plantains, and one carton contained 24.2 kilograms
 6 of green plantains, peeled, vacuum packed. The
 7 fresh plantains were loose packed with the top of
 8 the pack covered with a plastic sheet."
 9 Let's first talk about the
 10 double-walled cardboard with telecopying tops.
 11 Is that normal packaging?
 12 A Yes.
 13 Q Is that the packaging you see in
 14 every shipment of plantains?
 15 A Yes.
 16 Q It's never different?
 17 A No.
 18 Q In your experience, is there any
 19 other form of packaging which might provide better
 20 quality control?
 21 A No.
 22 Q What is this carton of green
 23 plantains, peeled, vacuum packed?
 24 A A sample for one of my customers.
 25 Q So that's something that you

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1 Machuca
2 would -- had you opened and peeled before the
3 surveyor got there?
4 A No.
5 Q I am trying to figure out what it
6 was.
7 A It was a sample.
8 Q You opened up a sample and that's
9 something you looked at before the surveyor got
10 there?
11 MR. McCONNELL: No, it was shipped
12 that way.
13 A No, it was peeled plantains on
14 plastic, vacuum packed.
15 Q In your experience is it good
16 practice to have peeled plantains shipped in the
17 same container as plantains with the peels in
18 contact?
19 A It's plantains, no problem.
20 MR. McCONNELL: They were vacuumed
21 packed.
22 A Vacuum pack.
23 MR. WOLFSON: Please stop, John.
24 MR. McCONNELL: I can't stop. It's
25 crazy.

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1 Machuca
2 Q Then it says, "The fresh plantains
3 were loose packed at the top of the pack."
4 Loose packed, what does that mean?
5 A Individual, finger.
6 Q So what kind of packing was
7 provided with each individual --
8 A Plastic cover and a piece of
9 plastic on top of the plantain.
10 Q Was it plastic, like a Saran wrap?
11 A No, with holes in it.
12 Q Plastic sheet had holes?
13 A Yes.
14 Q How many holes?
15 A I don't know how many holes.
16 Q In your experience, is it generally
17 considered good practice to cover plantains with
18 plastic?
19 A Yes, sure.
20 Q Why is that?
21 A Make sure when you throw the box on
22 top of it, it won't scratch the other plantains.
23 Keep it fresh.
24 Q In the containers?
25 A Protection.

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1 Machuca
2 Q In the containers itself you had
3 the cartons stacked up?
4 A Yes.
5 Q About how many rows of boxes would
6 there be?
7 A I don't know how many rows, but I
8 did not go over the red line.
9 Q About how many boxes high?
10 A Eight or nine.
11 Q About how many boxes deep toward
12 the back?
13 A I can't tell you how many boxes.
14 Q Each box had a plastic sheet over
15 it?
16 A Yes.
17 Q Would the plastic sheet go all the
18 way around the box or just the top?
19 A Just the top.
20 Q Did the bottom of the box have
21 holes in it, too?
22 A Yes.
23 Q In your experience, is that
24 sufficient to allow ventilation within the
25 container to occur?

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1 Machuca
2 A Yes.
3 Q Back down to conditions.
4 I will quote again, the surveyor
5 says, "Upon opening the container, J.R.J.'s
6 personnel noted that the plantains were soft and
7 turning ripe."
8 When did that opening of the
9 container occur? Was that on July 20?
10 A Same day that the container
11 arrived.
12 Q It looks like the container arrived
13 around 3:00 p.m. Would it have been the custom
14 and practice of J.R.J. to open it the same day or
15 the following day?
16 A Same day.
17 MR. McCONNELL: Where did you get
18 3:00 p.m?
19 MR. WOLFSON: I am sorry, 4:00 p.m.
20 Thank you, John.
21 Q What were the business hours of
22 J.R.J.?
23 A I run -- I run the place. Around
24 the -- I run the place. I have no hours. If I
25 receive a containers, I always have to be there.

17 (Pages 62 to 65)

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1 Machuca
2 Q Are there ever occasions when
3 you're not at the facility when a container
4 arrives?
5 A No, never.
6 Q So if you're traveling to Colombia,
7 for example, that would be a period that there
8 would be no container arriving?
9 A Well, I make sure that I am there
10 when something arrives from overseas.
11 Q How did you go about determining
12 the condition of the cargo?
13 Did you pull out one box or several
14 boxes?
15 Were all the boxes unloaded from
16 the container at that time?
17 A No.
18 Q They were kept in the container?
19 A Yes.
20 Q What was the normal practice of
21 J.R.J. as far as returning the container to the
22 pier, empty?
23 A Well, I return it right away. As
24 soon as they get to my premises.
25 Q In this case you didn't do that

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1 Machuca
2 though.
3 A I couldn't do it.
4 Q Was the container hooked up to
5 electricity?
6 A No.
7 Q So from July 20, 2006 at 1600 hours
8 the reefer unit was no longer running?
9 A They give you the containers with a
10 Genset on it which you can regulate the
11 refrigeration.
12 Q There was a Genset -- when the
13 trucker arrived, the Genset was attached?
14 A Yes.
15 Q But from 1600 hours on July 20 it
16 wasn't hooked up?
17 A Once I saw the product turning
18 ripe, just raised the temperature so I could sell
19 them as ripe plantains. I could not sell that
20 product.
21 Q Did the refrigeration remain on in
22 the container connected to power after July 20?
23 A Yes, when the trucker arrived the
24 refrigeration was on.
25 Q And did it continue on?

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1 Machuca
2 A No, we shut it off.
3 Q So when you say you turned the
4 temperature up, the container was already shut
5 down at that point?
6 A Well, you call it shut off. I put
7 it back on.
8 Q I am trying to understand.
9 A I cannot give you exact dates,
10 because you're giving me July 20. I don't know
11 the dates.
12 Q I am trying to find out when the
13 refrigeration ended. You just told me it was
14 July 20 at 1600 hours.
15 A Well, I am not sure if it was
16 exactly July 20. You would have to go to the
17 record.
18 Q The temperature records?
19 MR. McCONNELL: Look, it arrived on
20 the 19th at 1600.
21 THE WITNESS: Right.
22 MR. WOLFSON: It says here it
23 arrived on the 20th.
24 MR. McCONNELL: 20th.
25 THE WITNESS: Yes, arrived July 20,

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1 Machuca
2 2006 approximately 1600 hours.
3 MR. McCONNELL: Okay.
4 Q It says, the trucker had -- it says
5 it was decided to hold them in the container and
6 try to sell them as ripe plantains.
7 Was that your decision?
8 A Yes.
9 Q What did you do?
10 A Raise the temperature, put a little
11 ethylene.
12 Q You gotta go back.
13 When you say you raised the
14 temperature, was the container where the plantains
15 were, still running the refrigeration, or had it
16 been shut down at that point?
17 A No, refrigeration was still
18 running.
19 Q I am trying to figure out when the
20 refrigeration stopped. That was when the
21 container was returned? Did it still have power
22 throughout that time?
23 A I don't remember, sir.
24 Q Was the Genset still there?
25 A Yes.

18 (Pages 66 to 69)

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1 Machuca
 2 Q So you kept the container in the
 3 Genset?
 4 A Yes.
 5 Q Do you know when the container and
 6 the Genset were returned?
 7 A Probably six days later.
 8 Q And during that time, the container
 9 had already been opened, right?
 10 A What was the question?
 11 Q The container had already been
 12 opened?
 13 A Yes.
 14 Q And it was the summertime, right?
 15 A Yes.
 16 Q Do you remember what the weather
 17 was like during that period?
 18 A No. Summertime.
 19 Q It says, "The trucker had departed
 20 prior to opening the container and J.R.J. signed
 21 for a full container load, no exceptions."
 22 A Yes.
 23 Q What I am getting at, and it's
 24 going back to the request for the trucker's
 25 documents that I asked for, and about the marked

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1 Machuca
 2 buyers I have out there.
 3 Q Were they interested in buying
 4 them?
 5 A Not really. I had to push it to
 6 them.
 7 Q Did they eventually buy them?
 8 A Some of them, yes.
 9 Q Did they inspect them before buying
 10 them or just took them?
 11 A It was given to them for a cheap
 12 price.
 13 Q Was it safe to say you tried
 14 everything you could, called all your contacts?
 15 A I called a lot of people and had a
 16 lot of returns.
 17 Q How many did you wind up selling
 18 for a price or is there a document showing that?
 19 A There is a document in here showing
 20 how much I sold and the price.
 21 Q What document are you referring to?
 22 A Exhibit 50.
 23 Q Hold on a second. Exhibit 50, did
 24 you prepare this document? It says "Attorney's
 25 Statement of Claim"?

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1 Machuca
 2 exceptions.
 3 Where is that document you signed?
 4 A Document that I signed?
 5 Q Well, it says, "J.R.J. had signed
 6 for a full container load with no exceptions."
 7 So I think it's safe to assume that
 8 when you sign something there's a written
 9 document?
 10 A Probably a received document, but I
 11 don't know where it is.
 12 MR. WOLFSON: I will make a request
 13 that you try to find it and forward a
 14 copy to me.
 15 Q In any event, does that accord with
 16 your recollection that you signed such a document?
 17 A Usually that document, the trucker
 18 brings it, takes it back with them.
 19 Q He wouldn't give you a receipt?
 20 A No. The receipt would be the bill.
 21 He would bill me.
 22 Q Back to my earlier question, how
 23 did you go about trying to sell the plantains?
 24 Who did you contact?
 25 A I called a couple of bodegas and

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1 Machuca
 2 A Yes.
 3 Q Who prepared this document?
 4 A I did.
 5 MR. McCONNELL: No, I did.
 6 A My attorney did.
 7 MR. McCONNELL: Just assist, come
 8 on.
 9 Q I am trying to make it easy.
 10 A My mistake.
 11 Q This is something that was prepared
 12 by your attorney?
 13 A Yes, sir.
 14 Q Did you -- do you remember
 15 discussing with him what you sold the cargo for?
 16 A Yes.
 17 MR. McCONNELL: There is a exhibit
 18 in there.
 19 Q Does this accord with your
 20 recollection of what you told him?
 21 A No. It's proof I gave him all the
 22 invoices of my client who took the product.
 23 Q Where are those invoices?
 24 A Got Exhibit 79, Exhibit 80, 81, 82,
 25 83, 84, 85.

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1 Machuca
 2 Q Okay. These invoices are dated
 3 July 22, all of them; is that correct?
 4 Well, some of them are July 24, 25
 5 and 26.
 6 A Yes.
 7 Q What is the date of the survey?
 8 A The date of the survey, August 31.
 9 Q Now --
 10 A No, that's the date that I guess he
 11 sent the survey that date. But he did the survey.
 12 Q It says on August 3rd.
 13 A August 3rd?
 14 Q August 3rd.
 15 A Right.
 16 Q Do any of these invoices indicate
 17 these are ripe plantains? It just says plantains,
 18 Colombia.
 19 A Just by looking at them, they were
 20 done.
 21 Q Would you normally point out it's a
 22 fresh green plantain or ripe plantain?
 23 A Yes.
 24 Q But you didn't here?
 25 A No.

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1 Machuca
 2 Q Is there a reason?
 3 A Because it was a fast sale and I
 4 had to take advantage of whatever I can with that
 5 product.
 6 Q At the time these invoices were
 7 generated, did you sell any fresh green plantains?
 8 A No.
 9 Q Why not?
 10 A I didn't have them.
 11 Q What about the prior week?
 12 A No.
 13 Q What about the week before that?
 14 A No, not that I know.
 15 Q Say in the month before and the
 16 month after, did you sell any plantains?
 17 A No.
 18 Q When was the next closest plantain
 19 shipment you sold?
 20 A I don't remember. I don't
 21 remember. That was my last container with
 22 Colombia. This thing really drop my money out and
 23 I couldn't ship for a little bit.
 24 Q Did the market for Colombian
 25 plantains change? Did it drop?

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1 Machuca
 2 A I don't remember.
 3 Q Why did you stop importing
 4 Colombian plantains?
 5 A The money and I wasn't going to
 6 take another chance like that.
 7 Q I am still trying to figure out
 8 what the difference in the market is between
 9 Colombian plantains and Ecuadorian plantains.
 10 I thought there was no real
 11 difference as far as the quality of the plantains
 12 itself.
 13 Wouldn't the market be the same in
 14 the U.S., whether it's a Colombian plantain or
 15 Ecuadorian plantain?
 16 A No.
 17 Q Why would it be different? What is
 18 the perceived difference in quality?
 19 A Supposedly they say it's better
 20 quality than Ecuadorian plantains.
 21 Q Did you sell any Ecuadorian
 22 plantains in the month after or prior to this?
 23 A Probably after.
 24 Q What did those sell for?
 25 A I do not remember.

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1 Machuca
 2 MR. WOLFSON: I will ask for copies
 3 of invoices of what the sound, allegedly
 4 sound shipment prior to this shipment
 5 sold for, and what the allegedly sound
 6 shipment after this shipment sold for.
 7 Q Most of these sales were made on
 8 July 22, and the last was made July 26, which is
 9 eight days before the surveyor.
 10 Moving on back to Bates stamp 65 --
 11 A Yes.
 12 Q -- I will quote again. It says,
 13 "Mr. Machuca stated that the refrigeration unit
 14 was running at the time of delivery. The
 15 requested shipping temperature was 7.2 Centigrade,
 16 45 Fahrenheit, and the set temperature on the
 17 refrigeration unit was 7.2 Centigrade and 45
 18 Fahrenheit."
 19 Does that accord with your
 20 recollection?
 21 A Yes.
 22 Q The temperature settings were
 23 correct?
 24 A Yes.
 25 Q And it says, "Actual temperature of

20 (Pages 74 to 77)

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1 Machuca
2 the unit's interior was not taken, but reportedly
3 felt similar to other shipments." Is that
4 correct?
5 A Yes.
6 Q Again, this isn't the surveyor
7 doing it, this is him reporting what you told him,
8 because when the surveyor was there, the container
9 wasn't there, correct?
10 A Correct.
11 Q In fact, when the surveyor was
12 there, the cargo was on the tarmac?
13 A Yes.
14 Q That's just like the asphalt?
15 A Floor.
16 Q That's outside?
17 A It was outside.
18 Q I think there are pictures. Let's
19 look at Bates stamp 68, 69, 70, 71, and 72. These
20 are pictures of the plantains taken on August 3rd
21 by the surveyor?
22 A Yes.
23 Q Did you -- he take these pictures?
24 A Yes.
25 Q You saw him taking them?

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1 Machuca
2 A Yes.
3 Q Are these pictures fair and
4 accurate depictions of what the cargo looked like
5 and where the cargo was at the time they were
6 taken?
7 A Yes.
8 Q And let's look at the first
9 picture. Is that plastic wrap around the
10 cardboard containers?
11 A Uh-huh, yes.
12 Q That plastic wrap extends all the
13 way around?
14 A Yes.
15 Q Was that the way it was in the
16 container or was that done afterwards?
17 A No.
18 Q What's the answer?
19 A No.
20 Q That's the way it was in the
21 container?
22 A No.
23 Q That was done afterwards?
24 A Yes.
25 Q So J.R.J did that?

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1 Machuca
2 A Yes.
3 Q Did you do that?
4 A Because if they were ripe, the
5 boxes would fall through and pallets would lean
6 over, just to hold them straight.
7 Q For stability?
8 A Yes.
9 Q Do you think that having plastic
10 around them would have effected their quality?
11 A Didn't come with plastic.
12 Q Putting the plastic around them, do
13 you think that had any effect on the condition of
14 the plantains?
15 A They were garbage already.
16 Q These photographs on 68, they show
17 the tarmac and it was clear weather?
18 A Yes.
19 Q Did it ever rain at any time?
20 A No.
21 Q How long was the cargo sitting
22 outside?
23 A Probably until the garbage man
24 comes by, the same day.
25 Q Between -- do we know when the

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1 Machuca
2 containers was returned?
3 At some point it left the
4 container, right?
5 A What?
6 Q You were using the container as
7 refrigeration for the cargo. You didn't return it
8 to the port immediately. You kept it in
9 refrigeration.
10 A Right.
11 Q How far up did you increase the
12 temperature to?
13 A Probably I brought it up to 90, 88,
14 now.
15 Q Why did you do that?
16 A Give it more heat, ripen it fast.
17 Q Why did you think it was better to
18 ripen it fast than to just keep it --
19 A Put some ethylene also, gas a
20 little.
21 Q Why did you think that was the
22 better course of action?
23 A To give it a nice yellow, better
24 yellow color; try to salvage whatever we could.
25 Q Why, was it more marketable?

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1 Machuca
2 A Almost ripe is no good, either
3 green or yellow. That's where the market is.
4 Q These plantains, when they arrived,
5 were neither green or yellow?
6 A No.
7 Q What were they?
8 A Turning soft.
9 Q I am looking for the plastic
10 covering that was supposed to be on the top of the
11 plantains. Do you see that depicted anywhere in
12 the pictures?
13 A Exhibit 70 you will see some
14 plastic covering next to a plantain.
15 Q Do you see any holes in that
16 plastic?
17 A I don't see holes there, but they
18 have holes.
19 Q There are two photos. What about
20 up in the top photo, Bates stamped 70? Looks like
21 there is plastic there, too.
22 A Yes.
23 Q Do you see any holes in that
24 plastic?
25 A Yes.

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1 Machuca
2 sold.
3 Q What happened to the rest of them?
4 A Sold.
5 Q At J.R.J.'s facilities, was there
6 an indoor storage facility as well?
7 A Yes.
8 Q Was that indoor facility climate
9 controlled?
10 A Yes.
11 Q There was air conditioning?
12 A In it -- in the office, but I have
13 a walk-in box in there.
14 Q Like a container inside the
15 facility?
16 A I had a container in the walk-in
17 box, refrigeration.
18 Q And is there any reason why this
19 cargo was not put in that box?
20 A It was already ripe. If I put it
21 in the box, it would turn black. You had to put
22 it in a heater box.
23 Q Any reason the cargo was stored
24 outside as opposed to inside?
25 A It was ready to be dumped.

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1 Machuca
2 Q On Bates stamped 71, there is some
3 more plastic that can be seen on the top photo.
4 Do you see any holes in that
5 plastic?
6 A It's very hard to see, but I would
7 be lying if I said there is holes there.
8 Q Again, you don't recall what it
9 was?
10 A No.
11 Q Did you have any discussions with
12 the surveyor before you decided to enhance
13 ripening and sell them as ripe, the plantains?
14 A No.
15 Q Did you do any canvassing of the
16 market before you made that decision?
17 A It was instant.
18 Q It does note -- we are on Bates
19 stamped 66, "At the time the examination,
20 approximately 20 pallets of plantains were on the
21 tarmac at the J.R.J. facility." Is that correct?
22 A Yes.
23 Q The rest of the plantains were
24 sold?
25 A Most of them, some of them were

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1 Machuca
2 Q This was August 3rd?
3 A On the day it says there.
4 Q It says that -- again, I am quoting
5 from the survey report, "The physical
6 characteristics of plantains were indicative of
7 maturation while stored in the elevated
8 temperature environment above 7.2 Centigrade and
9 45 Fahrenheit."
10 Would you agree with that
11 statement?
12 A What was the question? Where are
13 you at?
14 Q 66.
15 MR. McCONNELL: Read it again.
16 A I don't find it. Okay.
17 (Witness reads to himself.)
18 Q That accord with your views?
19 A Yes.
20 Q My question is -- but you had
21 already raised the temperature to cause the
22 ripening to come more quickly, right?
23 A Yes.
24 Q So this should be no surprise. At
25 that point that was your intention to cause

22 (Pages 82 to 85)

1 Machuca
2 maturation by elevated temperature?
3 MR. McCONNELL: Are you talking
4 about at the time he received it or at
5 the time the surveyor --
6 MR. WOLFSON: The time the surveyor
7 noted it. This is what the surveyor saw
8 on August 3rd.
9 Q No trick question.
10 A What was your question?
11 Q I am saying this should be no
12 surprise since this was your intention, wasn't it,
13 your intention to ripen the plantains?
14 A Yes, and sell them.
15 Q And at the time of this survey,
16 that had already occurred; this is August 3rd,
17 right, when you -- did you raise the temperature
18 when it was still in the container?
19 A Right.
20 Q This occurred on August 3rd, long
21 after the container was returned.
22 A Uh-huh.
23 MR. McCONNELL: What sentence are
24 you talking about based on the
25 information? Which sentence are you

1 Machuca
2 talking about?
3 MR. WOLFSON: Beginning here
4 (indicating). He already answered these
5 questions. It's not a trick.
6 MR. McCONNELL: Inasmuch as the
7 plantains were prepared for destruction.
8 MR. WOLFSON: You're not reading
9 the right sentence.
10 "The physical characteristics of
11 the plantains were indicative of
12 maturation while stored in an elevated
13 temperature environment above 72 degrees
14 Centigrade."
15 MR. McCONNELL: At the time he saw
16 them.
17 MR. WOLFSON: Yes. That's all I am
18 asking. This is August 3rd.
19 MR. McCONNELL: No.
20 MR. WOLFSON: We have already had
21 the testimony that Mr. Machuca raised the
22 temperature in an effort to sell them as
23 ripe plantains.
24 MR. McCONNELL: Are you trying to
25 second guess the surveyor?

1 Machuca
2 MR. WOLFSON: You keep assuming I
3 am trying to trick you. I am just trying
4 to -- he already answered these
5 questions.
6 MR. McCONNELL: The survey says
7 what it says.
8 MR. WOLFSON: That's right, it does
9 say what it says.
10 Q Then it says, "Inasmuch as the
11 plantains were prepared for destruction and the
12 overly ripe condition, we did not take pulp
13 temperatures."
14 A Right.
15 MR. McCONNELL: That's what it
16 says.
17 MR. WOLFSON: John.
18 Q Did you have any discussions with
19 the surveyor about whether you wanted him to take
20 pulp temperatures or not?
21 A No.
22 Q Is it your practice when having
23 these damage temperatures that pulp temperatures
24 were usually taken, that you take the pulp
25 temperature of the cargo?

1 Machuca
2 A Yes.
3 Q But in this case, the cargo was
4 already sitting out on the tarmac for a period of
5 days anyway, and was going to be destroyed, so you
6 didn't think it was worthwhile; is that correct?
7 A That's what the survey says.
8 MR. McCONNELL: Maybe the surveyor
9 didn't think it worthwhile.
10 A The surveyor's opinion, ready to be
11 dumped.
12 Q And the surveyor, in fact,
13 concluded that the plantains were in an
14 overly-ripe condition and no shelf life and no
15 market value?
16 MR. McCONNELL: Yes.
17 Q Would you agree with that
18 assessment?
19 A Yes.
20 Q And did the surveyor -- strike
21 that.
22 Now, the next paragraph begins,
23 "Cause of damage," and I will get the quote. It
24 says, "No complaint of condition and/or
25 information and/or documents detailing the

1 Machuca
 2 condition of cargo at the time of loading into the
 3 original trailer has been seen by us."
 4 Would you agree with that
 5 statement?
 6 A Yes.
 7 Q Then it says, "Based on information
 8 gathered and conditions found, it is our opinion
 9 that the plantains were subject to temperatures
 10 higher than the requested temperatures while in
 11 the care and custody of the ocean carrier."
 12 MR. McCONNELL: That's what it
 13 says.
 14 Q Would you agree with that
 15 statement?
 16 A That's what it says.
 17 Q Why, if you agree with that
 18 statement, I am asking you, why would you make the
 19 assumption, or why you would conclude that this
 20 occurred while it was in the care of the ocean
 21 carrier?
 22 MR. McCONNELL: Because he saw it.
 23 MR. WOLFSON: Hey, no, no, no. You
 24 will not answer this question.
 25 A We have a guy there that we check

1 Machuca
 2 the product when it's put on the container. And I
 3 know that nobody is going to ship ripe plantains.
 4 We want to have a business relationship, we are as
 5 an importer and he as an exporter --
 6 Q But put yourself in the shoes of
 7 the surveyor. This is August 3rd after the
 8 plantains had been ripened and after they have
 9 been sitting on the tarmac, putting yourself in
 10 his position, how would you be able to fairly
 11 conclude this occurred during the ocean carriage?
 12 MR. McCONNELL: Oh, I would object
 13 to that. I object to that.
 14 You're asking for the thought
 15 process of the surveyor. You can ask him
 16 on the trial.
 17 Q It says, "Some of these cartons,
 18 the ones that weren't sold, were destroyed by
 19 disposal to the refuse site." Is that correct?
 20 A Yes.
 21 Q And then the surveyor says,
 22 "Certificate of disposal can be obtained from
 23 J.R.J., Inc."
 24 Is that certificate of disposal
 25 attached to the documents you produced?

1 Machuca
 2 A I don't think so.
 3 MR. WOLFSON: I make another
 4 request on the record.
 5 Q Do you think you might have it back
 6 at J.R.J.?
 7 A I have a guy that used to come and
 8 pick up the garbage. And this business sometimes
 9 you work without cash.
 10 Q Well, it says here a certificate of
 11 disposal?
 12 A I have it, for a dumpster at my
 13 warehouse.
 14 MR. WOLFSON: Okay. I would ask
 15 for a certificate of disposal for this
 16 cargo.
 17 Q When did you request the survey?
 18 A When did I request the survey?
 19 Q Yes.
 20 A August 3rd. It says August 3rd.
 21 2006.
 22 Q Why didn't you request the survey
 23 sooner?
 24 A I don't know. You know, I tried to
 25 sell most of it and I recall calling on Mr. John

1 Machuca
 2 Perez, and he was out of town, I think, or his
 3 wife, sick or something. I didn't get earlier
 4 than that.
 5 Q A couple of questions. I know you
 6 haven't reviewed the temperature data, but can you
 7 be sure whether or not the unit was on the full
 8 time, all the time that the container was at the
 9 J.R.J. facility or was it off at some point?
 10 A Ah --
 11 Q You don't know?
 12 A No.
 13 Q And the other thing I was hoping,
 14 again, we can confirm this ourselves, but I wonder
 15 if you can confirm when the container was
 16 returned, the empty container was returned?
 17 A No. I know it stood at the
 18 warehouse a couple of days. We have some emails
 19 that I was asking for more time because usually if
 20 you don't return the container on time, they're
 21 going to charge you. So I got ahold of CSAV and
 22 asked them to let me hold the container a little
 23 longer.
 24 Q If you can estimate, was it, say,
 25 for a couple of days?

Jimmy Machuca

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1 Machuca
 2 A Over a week, I think.
 3 Q It was about a week?
 4 A About a week.
 5 Q Can you estimate about how long --
 6 so you will say by July 27, roughly --
 7 A Maybe.
 8 Q -- it was returned?
 9 A Maybe a little more than that.
 10 Q You don't remember?
 11 A I don't remember.
 12 Q You have no documents indicating
 13 when that might be?
 14 A No.
 15 Q As you sit here today, what is the
 16 basis for your belief that proper care wasn't
 17 afforded to the cargo while it was in the custody
 18 of CSAV?
 19 A Well, my basis to believe that
 20 it -- the temperature wasn't there.
 21 Q Did you review the temperature
 22 records?
 23 A No.
 24 Q Did your surveyor review the
 25 temperature records?

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1 Machuca
 2 A My lawyer.
 3 Q I asked if your surveyor did.
 4 A No.
 5 Q I hate to have this email.
 6 MR. WOLFSON: Off the record.
 7 (Discussion off the record)
 8 MR. WOLFSON: Mark this as Machuca
 9 8.
 10 (Recapitulation of outstanding
 11 invoices was marked as Machuca Exhibit
 12 No. 8 for identification, as of this
 13 date.)
 14 MR. WOLFSON: Let the record
 15 reflect that I am showing the witness
 16 what has been marked as Machuca 8. I am
 17 sure you have seen this before.
 18 Q I will ask you on the record if you
 19 recall seeing that?
 20 A Yes.
 21 Q Okay. That's the CSAV's
 22 recapitulation of outstanding freight invoices
 23 that they claim -- CSAV claims that J.R.J. owes to
 24 CSAV?
 25 A Yes.

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1 Machuca
 2 Q And I understand that you dispute
 3 some of this?
 4 A Yes.
 5 MR. WOLFSON: I will mark this
 6 document as Machuca 9.
 7 (Letter was marked as Machuca
 8 Exhibit No. 9 for identification, as of
 9 this date.)
 10 MR. WOLFSON: Let the record
 11 reflect that I am showing the witness
 12 what has been marked as Machuca 9.
 13 Q You recognize that document
 14 (handing). Yes or no?
 15 A Yes.
 16 Q Is this a letter you wrote
 17 responding to the freight claim?
 18 A Uh-huh.
 19 Q I don't want to paraphrase what you
 20 say, let me just read it.
 21 (Reading) We were working under
 22 service contract and our freight rate was \$4,360.
 23 And I believe -- strike that. The whole thing.
 24 Let me read this.
 25 It, the rate would be \$4,560,

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1 Machuca
 2 except that J.R.J. is entitled to VIP \$200 for
 3 plantains. Again that's the service contract that
 4 we are waiting for a copy of?
 5 A Yes.
 6 Q So counsel may have it. I have the
 7 amendment page. I don't have the contract.
 8 MR. WOLFSON: I hate to just mark
 9 part of the contract, I would rather have
 10 the whole thing.
 11 MR. McCONNELL: Mark the amendment
 12 page, that's all I sent. And I am sure I
 13 sent it to you.
 14 MR. WOLFSON: I am sure you didn't.
 15 One of us will be wrong, and it won't be
 16 the first time or the last.
 17 MR. McCONNELL: That's the
 18 amendment page.
 19 MR. WOLFSON: Off the record.
 20 (Discussion off the record)
 21 MR. WOLFSON: Mark this two-page
 22 document as Machuca 10.
 23 (Two-page document was marked as
 24 Machuca Exhibit No. 10 for
 25 identification, as of this date.)

25 (Pages 94 to 97)

1 Machuca
2 Q I will read further, it says --
3 according to the letter you emailed us, which
4 includes Machuca Exhibit 8, it shows that there
5 are two open freight invoices aside from the \$200
6 balance which you claim under VIP deductions,
7 correct?
8 A Just one that I recall. I do not
9 know about the other one.
10 Q And then you say, "I am pretty sure
11 that there is only one open invoice. but I will
12 check and confirm."
13 A Right.
14 Q So when we are talking about the
15 open invoices, we are talking about the freight
16 which you would say was \$4,360, and assuming that
17 you are entitled to the \$200 VIP, the question is
18 whether there is one open invoice for 4,360, or
19 whether there are two open invoices for 4,360?
20 A Right.
21 Q Did you ever confirm whether there
22 was one or two?
23 A There is only one. I checked all
24 my paperwork, but I am very sure there is only one
25 freight that I owed them.

1 Machuca
2 Q Because as you know, CSAV is
3 claiming they didn't receive payment for either
4 one.
5 A Well, I moved my warehouse and all
6 my paperwork is all over the place. I am still
7 checking, but I have -- for the one we have proof,
8 we checked, Mr. McConnell.
9 Q Do you remember ever bouncing a
10 check?
11 A Yes.
12 Q Could that be the reason for the
13 confusion?
14 A No.
15 Q You know, discovery is closing. I
16 want to give you every opportunity I can. I offer
17 to counsel to try to get an extension. If you
18 want, I will consent, but now, as far as the
19 freight claim goes, hey, look, CSAV is very
20 adamant, they didn't receive the freight for two
21 of the shipments.
22 So if you have any proof of
23 payment, I am sure counsel will tell you that now
24 is the time to come forward with it, because --
25 well, now is the time to come forward with it.

1 Machuca
2 A Okay.
3 MR. WOLFSON: I will ask on the
4 record for any proof of such payment.
5 Q But aside from your belief that you
6 may have paid one of those payments, is there any
7 reason why freight would not be paid on these
8 bills of lading?
9 A No.
10 Q Indicating Machuca 8?
11 A No.
12 Q You have acknowledged for sure that
13 one has not been paid. Is there any reason that
14 has not been paid?
15 A Check was returned by my bank, no
16 money in the bank.
17 MR. WOLFSON: Fair enough.
18 Q I will have to ask. This is not
19 the first lawsuit you have had with CSAV. We had
20 another one before the same judge.
21 A Yes.
22 Q And in that case, there was a
23 similar allegation of cargo damage and similar
24 cross-claims for unpaid freight, and that settled.
25 I won't get into the details of settlement, but it

1 Machuca
2 settled out of court.
3 MR. WOLFSON: Are there -- I don't
4 know if -- John, has J.R.J. been involved
5 in any other lawsuits besides this one
6 and the other one with CSAV?
7 A No.
8 MR. McCONNELL: With CSAV?
9 MR. WOLFSON: Besides the ones with
10 CSAV.
11 MR. McCONNELL: Oh, sure.
12 Q Have there been other claims, cargo
13 claims by J.R.J. against other ocean carriers?
14 A Yes.
15 Q And claims for freight of other
16 ocean carriers?
17 A Yes.
18 Q And are you aware of whether there
19 are any outstanding judgments against J.R.J.?
20 A Whatever was, I think it's been
21 solved.
22 Q Is J.R.J. still in business?
23 A Yes.
24 Q Did J.R.J. change addresses at any
25 time?

Jimmy Machuca

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1 Machuca
 2 A Not my home address, warehouse
 3 address, yes.
 4 MR. WOLFSON: I will review my
 5 notes and if we can take a two-minute
 6 break, we will be out of here.
 7 (Discussion off the record.)
 8 MR. WOLFSON: I am done.
 9 (Time Noted: 12:36 p.m.)
 10

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JIMMY MACHUCA

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 4 Witness Examination Page
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 9 For Ident.
 10 1 Plaintiff's Rule 26 document 11
 11 production, January 23, 2008
 12 2-7 Emails 23
 13 8 Recapitulation of outstanding 95
 14 invoices
 15 9 Letter 96
 16 10 Two-page document 98

REQUESTS

17 Pages 14, 16, 16, 17, 30, 51, 51, 51, 53, 71
 18 77, 92, 92, 100
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1
 2 CERTIFICATE
 3
 4 STATE OF NEW YORK)
 5 COUNTY OF NEW YORK)
 6

7 I, Mel Winter, a Shorthand Reporter
 8 and Notary Public of the State of New
 9 York, do hereby certify:

10 That I reported the proceedings in
 11 the within entitled matter, and that the
 12 within transcript is a true record of
 13 said proceedings.

14 I further certify that I am not
 15 related to any of the parties to this
 16 action by blood or marriage and that I am
 17 in no way interested in the outcome of
 18 this matter.

19 IN WITNESS WHEREOF, I have hereunto
 20 set my hand this 9th day of June, 2008.
 21
 22
 23
 24
 25

Mel Winter